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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Jerry G. Jones.

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## DIGEST

Claitor (SB 531)

Proposed law creates Oil Spill Relief Integrity Act authorizing certain actions and qui tam actions.

Proposed law provides certain findings. Provides that the legislature intends the attorney general and private citizens of Louisiana to be agents of this state with the ability, authority, and resources to pursue civil monetary penalties or other remedies to protect the fiscal and programmatic integrity of oil spill relief programs in Louisiana from persons who engage in fraud, misrepresentation, abuse, or other ill practices, and obtain funds, property, or other compensation to which they are not entitled.

Proposed law provides definitions. Provides that "oil spill relief program" means any state or federal program or fund created for the purpose of assisting persons who incurred personal, business, or property damage or other losses due to the Deepwater Horizon Oil Spill. It shall not include any matter specifically subject to other qui tam action by law, including qui tam actions on behalf of hurricane relief programs and on behalf of medical assistance programs.

Proposed law provides that no person shall knowingly present or cause to be presented a false or fraudulent claim for funds, property, use of property, or other compensation from a oil spill relief program; that no person shall knowingly engage in misrepresentation to obtain, or attempt to obtain, funds, property, use of property, or other compensation from a oil spill relief program; that no person shall conspire to defraud, or attempt to defraud, an oil spill relief program through misrepresentation or by obtaining, or attempting to obtain, payment for a false or fraudulent claim; and that no person shall knowingly make, use, or cause to be made or used a false, fictitious, or misleading statement on any form or document for the purpose of certifying or qualifying any person for eligibility for oil spill relief programs or receiving any funds, property, use of property, or other compensation from a oil spill relief program that he is not authorized to receive.

Proposed law provides that in addition to any other civil, criminal, or administrative action authorized by law, the attorney general may institute a civil action in the courts of this state to seek recovery from persons who violate the provisions of the proposed law.

Proposed law provides relative to recovery of damages, costs, expenses, fees, and attorney fees, including recovery by the defendant if the court determines the action was frivolous.

Proposed law further provides that, subject to certain limitations, a person who is found to have violated the proposed law shall be subject to a civil fine in an amount not to exceed three times the amount of actual damages sustained by the oil spill relief programs as a result of the

violation, and a civil monetary penalty of not more than ten thousand dollars for each false or fraudulent claim, misrepresentation, illegal remuneration, or other act prohibited by the proposed law.

Proposed law further provides that a private person may institute a civil action to seek recovery on behalf of oil spill relief programs and himself, except for the civil monetary penalty provided, for a violation of the proposed law. The institutor shall be known as a "qui tam plaintiff" and the civil action shall be known as a "qui tam action".

Proposed law provides that a qui tam plaintiff shall be an original source of the information which serves as the basis for the alleged violation. More than one person may serve as a qui tam plaintiff in a qui tam action arising out of the same information and allegations provided each person qualifies as an original source.

Proposed law provides that no court shall have jurisdiction over a qui tam action based upon a disclosure of allegations or transactions in a criminal, civil, or administrative hearing or as the result of disclosure of a governmental audit report, investigation, or hearing unless the person bringing the action is an original source of the information.

Proposed law provides that no court shall have jurisdiction over a qui tam action based upon a disclosure through the media unless the person bringing the action is an original source of the information and that fact is confirmed by a person with knowledge of who provided the information.

Proposed law provides that a person who is or was a public employee or public official or a person who is or was acting on behalf of the state shall not bring a qui tam action if the person has or had a duty or obligation to report, investigate, or pursue allegations of wrongdoing or misconduct by persons receiving funds from oil spill relief programs.

Proposed law provides that a person who is or was a public employee or public official or a person who is or was acting on behalf of the state shall not bring a qui tam action if the person has or had access to records of the state through the normal course and scope of his employment or other relationship with the state.

Proposed law provides that no employer of a qui tam plaintiff shall discharge, demote, suspend, threaten, harass, or discriminate against a qui tam plaintiff at any time arising out of the fact that the qui tam plaintiff brought an action under the proposed law unless the court finds that the qui tam plaintiff has instituted or proceeded with an action that is frivolous, vexatious, or harassing.

Proposed law provides that the court shall allow the attorney general to intervene and proceed with the qui tam action in the district court at any time during the qui tam action proceedings. Also provides that a qui tam complaint and information filed with the attorney general shall not be subject to discovery or become public record until judicial service of the qui tam action is made on any of the defendants, except that the information contained therein may be given to other governmental entities or their authorized agents for review and investigation.

Proposed law provides qui tam action procedures.

Proposed law provides that, subject to certain limitations, if the attorney general intervenes in the action brought by a qui tam plaintiff, the qui tam plaintiff shall receive at least 10% percent, but not more than 20%, of actual damages and civil fines awarded by the court, exclusive of the civil monetary penalty provided by the proposed law. The court may award less if it finds the action to be based primarily on disclosures of specific information other than information provided by the qui tam plaintiff. If the attorney general does not intervene in the action, the court may award up to 30% of damages. Also provides for award of costs, expenses, fees, and attorney fees. Further provides for the making whole of the oil spill relief program.

Proposed law further provides that a qui tam plaintiff shall not be entitled to recovery if the court finds that the plaintiff instituted or proceeded with an action that was frivolous, vexatious, or harassing. Provides for recovery by the defendant against a qui tam plaintiff under certain circumstances. Also provides that in no instance shall the attorney general or the state be liable for any costs, expenses, fees, or attorney fees incurred by the qui tam plaintiff or for any award entered against the qui tam plaintiff.

Proposed law creates Oil Spill Relief Programs Fraud Detection Fund, and provides for purposes of the fund. Provides that monies in the fund shall be appropriated to pay costs or expenses incurred by the attorney general relative to an action instituted pursuant to the proposed law, to enhance fraud and abuse detection and prevention activities, to pay rewards for information, and to provide a source of revenue for oil spill relief programs.

Proposed law authorizes attorney general to provide a reward of up to \$2000 to an individual for fraud and abuse information, subject to funds being appropriated for such purpose. Provides for attorney general to develop reward process in accordance with APA.

Proposed law provides that no employee shall be discharged, demoted, suspended, threatened, harassed, or discriminated against in any manner in the terms and conditions of his employment because of any lawful act engaged in by the employee or on behalf of the employee in furtherance of any action taken pursuant to the proposed law in regard to a person from whom recovery is or could be sought. Such an employee may seek any and all relief for his injury to which he is entitled under state or federal law.

Proposed law provides that no individual shall be threatened, harassed, or discriminated against in any manner by a business organization, government agency, or other person because of any lawful act engaged in by the individual or on behalf of the individual in furtherance of any action taken pursuant to the proposed law in regard to a person from whom recovery is or could be sought. Such an individual may seek any and all relief for his injury to which he is entitled under state or federal law.

Proposed law provides that an employee of a private entity may bring his action for relief against his employer in the same court as the action or actions were brought pursuant to the proposed law. Further provides for treble damages. Also provides for no recovery if court finds action was

frivolous, vexatious, or harassing.

Effective August 15, 2010.

(Adds R.S. 39:2165 - 2165.12)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill.

1. Changed proposed law from "State Spending Programs Integrity Act" to "Oil Spill Relief Integrity Act".
2. Added definition of "oil spill relief program" and deleted definition of "state spending program".
3. Added Oil Spill Relief Programs Fraud Detection Fund.
4. Added provisions relative to reward for fraud and abuse information.